

In the Matter of THE SHERWIN-WILLIAMS COMPANY *and* CHEMICAL  
WORKERS UNION No. 22215, AMERICAN FEDERATION OF LABOR

*Case No. C-1875.—Decided December 5, 1941*

**Jurisdiction:** paint manufacturing industry.

**Unfair Labor Practices**

*Interference, Restraint, and Coercion:* anti-union statements; questioning employees about the activities of "outside" union and reasons for its formation; unlawful advocacy of inside union.

Employer's requirement that its foremen renounce their union affiliation or suffer demotion *held* appropriate and not to constitute an unfair labor practice where under the circumstances such action was taken to counteract their interference with the right of the subordinate employees to self-organization

*Collective Bargaining:* charges of, dismissed.

*Held:* it is not incumbent upon an employer when confronted with demands of two competing organizations as bargaining representative of employees to grant exclusive recognition to either of such organizations.

**Remedial Orders:** employer ordered to cease and desist unfair labor practices.

*Mr. Christopher W. Hoey*, for the Board.

*Messrs. Thomas F. Veach and George D. Bonebrake*, of Cleveland, Ohio, for the respondent.

*Mr. Leon Gerofsky*, of Somerville, N. J., for the Independent.

*Mr. Samuel R. Isard*, of Newark, N. J., and *Mr. Charlton Ogburn*, by *Mr. C. C. Johnson*, of New York City, for the Union.

*Mr. Bliss Daffan*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been duly filed by Chemical Workers Union No. 22215, American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint dated November 29, 1940, against The Sherwin-Williams Company, Bound Brook, New Jersey, herein called the respondent, alleging that the respondent had engaged in

and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and accompanying notices of hearing thereon were duly served upon the respondent, the Union, and Independent Labor Union of Sherwin-Williams Employees, herein called the Independent.

Concerning the unfair labor practices, the complaint as amended at the hearing,<sup>1</sup> alleged in substance that the respondent: (1) urged, persuaded, and warned its employees at its Bound Brook, New Jersey, plant against aiding, becoming, or remaining members of the Union; threatened its employees with discharge, demotion, or other reprisals if they joined or aided the Union; expressed hostility towards the Union, indicated approval of the Independent; and urged, persuaded, and warned its employees to join or assist the Independent; (2) refused to bargain collectively with the Union as the exclusive representative of the employees of the respondent within an appropriate unit, although the majority of such employees had designated the Union as their bargaining agent; and (3) by the foregoing and other acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 9, 1940, the respondent filed its answer to the complaint, in which it demed that it had engaged in any unfair labor practices as alleged in the complaint and alleged affirmatively that it had bargained collectively.<sup>2</sup> The respondent, in its answer moved to dismiss the complaint, and also moved that the complaint be made more definite and certain or, in the alternative, that it be furnished with a bill of particulars.

Pursuant to notice, a hearing was held from December 9 through 12, 1940, and January 7 through 21, 1941, at Somerville, New Jersey, before Tilford E. Dudley, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the Union, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the beginning of the hearing the respondent urged the formal motions contained in its answer to dismiss the complaint and for a bill of particulars. The Trial Examiner overruled both of said motions. Likewise, at the opening of the hearing, the Independent filed a motion to intervene which was

<sup>1</sup> The complaint was amended without objection to change the description of the appropriate unit to include therein shipping employees

<sup>2</sup> During the course of the hearing, on January 7, 1941, the respondent filed a supplemental answer, in which it alleged that it had failed to come to an agreement with the Union because the Union's demands were unreasonable.

granted by the Trial Examiner over the objection of the Union. Thereupon the Independent filed its answer in which it denied that the respondent had warned, urged, or persuaded its employees to join the Independent, and alleged affirmatively that the respondent had permitted its supervisory employees to persuade and warn its employees to become members of the Union and to refrain from becoming or remaining members of the Independent, and that the respondent had refused to bargain collectively with the Independent, which had been designated as the representative for collective bargaining by a majority of the employees in an appropriate unit. Motions by the Board and the Union to strike the affirmative matter from the Independent's answer were denied by the Trial Examiner.

At the close of the Board's case and again at the close of the hearing, the respondent moved that the complaint be dismissed. The Independent joined in these motions in so far as the complaint pertained to it. These motions were denied by the Trial Examiner. At the close of the hearing, counsel for the Board moved that the pleadings be conformed to the proof in regard to minor matters and stated that he did not thereby seek to enlarge the complaint. This motion was granted by the Trial Examiner. During the course of the hearing the Trial Examiner made rulings on other motions and on objections to the admission of evidence. We have reviewed the rulings of the Trial Examiner and find that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 4, 1941, a stipulation was entered into between counsel for the Board, the respondent, the Union, and the Independent as to certain corrections in the transcript of testimony at the hearing, and on March 10, 1941, an order was issued by the Trial Examiner incorporating the stipulation as part of the record and directing that the corrections be made in the transcript of testimony in accordance with said stipulation.

On May 15, 1941, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent, the Union, and the Independent. The Trial Examiner found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommended that it cease and desist therefrom and take certain appropriate affirmative action.

On June 7 and June 16, 1941, respectively, the respondent and the Independent filed exceptions to the Intermediate Report. Pursuant to notice duly served upon all parties, a hearing was held before the Board in Washington, D. C., on August 14, 1941, for the purpose of oral argument. The respondent and the Independent were represented by counsel and participated in the argument.

The Board has considered the exceptions of the respondent and the Independent to the Intermediate Report and except in so far as the exceptions are consistent with the findings, conclusions, and order set forth below, finds no merit in them.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The respondent, The Sherwin-Williams Company, is an Ohio corporation with general offices at Cleveland, Ohio. It operates 14 plants in 9 different States in which it manufactures paints, varnishes, enamels, lacquers, insecticides, coal-tar products, disinfectants, cleaners, and related products. It also owns plants in Cuba and Argentina. The present proceeding relates only to the respondent's plant at Bound Brook, New Jersey, at which the respondent manufactures agricultural insecticides, arsenic acids, and disinfectants. In the year 1939, the Bound Brook plant used approximately 20,000 tons of raw materials, of which 98 percent was shipped to the plant from points outside the State of New Jersey. During the same year, the products of the Bound Brook plant aggregated about 20,000 tons, of which 97 percent was shipped to points outside the State of New Jersey. The respondent employs approximately 210 employees at its Bound Brook plant.

### II. THE ORGANIZATIONS INVOLVED

Chemical Workers Union No. 22215 is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. It admits to membership employees at the respondent's Bound Brook plant.

The Independent Labor Union of Employees of Sherwin-Williams is an unaffiliated labor organization which admits to membership employees at the respondent's Bound Brook plant.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The chronology of events*

##### (1) Formation of the Union

In November 1939 the employees at the respondent's Bound Brook plant began discussing the formation of unions and the increase in wages at nearby plants. Some employees suggested the formation of a union at the respondent's plant. Accordingly, during about the

second week of that month, John Malko,<sup>3</sup> a foreman in the finishing department, together with some other employees, prepared a petition reading as follows: "We, the undersigned, hereby give our undivided support to the organization of Insecticide Workers Union, at Sherwin-Williams Co., Bound Brook, New Jersey." The petition was then circulated by Malko and others openly in the plant during working hours.

Eighty-five employees signed the petition. Malko, after some discussion with the employees who signed the petition, made arrangements for Thaddeus J. Burns, an organizer for the A. F. of L., to address the respondent's employees at a meeting to be held on Sunday, November 19, 1939. At the same time a friend of Malko, one Chiesa, president of an A. F. of L. local at the nearby Johns-Manville plant, gave Malko some A. F. of L. authorization cards and suggested that he get a few signed before the meeting. Five cards were signed before November 19.

During this week, Malko worked on the night shift from 11 p. m. to 6 a. m. At about midnight on Friday, November 17, Roger S. Ewing, production manager at the Bound Brook factory, paid a visit to the plant. Although Plant Superintendent Somerville testified that it was a common occurrence for Ewing to visit the plant at night Malko testified that he had never seen Ewing in the plant during the night shift prior to this occasion and Ewing stated that he could recall no occasions when he had gone to the plant during the night shift and talked to Malko except his visit of November 17 and one which occurred subsequent thereto. We find, as did the Trial Examiner, that Ewing's visit to the plant at night was an unusual occurrence.

Ewing testified that he had received reports that the night shifts had been "soldiering" on the job and so went down to see what was going on. After some preliminary conversation, Ewing asked Malko, who was then the foreman of one of the night crews, how he was getting along with the organization of the Union, why he was forming a union, and why he was dissatisfied with working conditions. Malko answered these questions, mentioning his own service with the respondent, his disappointment in not getting a recent promotion, the dissatisfaction of the men in the change of shift work, the working of 1 day per week during the summertime which prevented the collection of unemployment insurance, and other grievances. Ewing then asked if Malko had any complaints at that particular time. Malko replied that he would like to have in operation in the plant a contract similar to that at the Chipman Chemical Company, where a union contract had been recently negotiated. Ewing replied that

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<sup>3</sup> Malko's position at the plant is hereinafter discussed.

he was "pretty sure" Somerville, the plant superintendent, had a copy of the Chipman contract and suggested that Malko see Somerville and talk with him about it before the Union was organized on the approaching Sunday. Malko told Ewing that the meeting on Sunday was just for the purpose of hearing some speakers; that as far as he knew, the Union was not organizing that Sunday and would not affiliate with anyone "just now" and that he would see Somerville on the following Monday. Ewing then asked: "Why should we have an outside union brought in? Why can't we have an independent, one just our own?" Malko replied: "Well, I don't know what the fellows want. Some of them want an independent, some want A. F. of L., and some C. I. O. It is sort of a mixup. I can't do anything about it now." Ewing asked if Malko would not "try to hold them over," and Malko answered, "Well, I will try."<sup>4</sup>

Between 70 and 100 employees of the respondent attended the meeting on Sunday, November 19, including Foremen Malko, Cullen, Scotillo, Epps, Paulus, and O'Hare.<sup>5</sup> Shea, president of an A. F. of L. union at the Calco Chemical plant in Bound Brook, called the meeting to order and introduced Burns. Burns spoke about the A. F. of L., and answered various inquiries that were made from the floor. After an inquiry and discussion as to the eligibility of foremen, and the duties of the respondent's supervisory employees, Burns answered that the respondent's foremen were eligible to join the Union.

At the end of the discussion, a motion was made and passed unanimously, that the group affiliate with the A. F. of L. The meeting then elected temporary officers, the following of whom were supervisory employees: Malko as chairman, Scotillo as treasurer, and Paulus as recording secretary. In addition a committee was selected to study conditions in the plant and commence the drafting of a contract which the Union would eventually present to the respondent. Applications for membership and cards authorizing the A. F. of L. to serve as the signers' collective bargaining representative were circulated among those attending the meeting and were signed by many of those present.

The next morning, on Monday, November 20, Malko went to the plant before the beginning of his shift, to see Somerville, pursuant to his arrangement with Ewing. As he walked through the plant,

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<sup>4</sup> Malko and Ewing agreed at the hearing as to the general content of this conversation but not as to every statement. However, their testimony is in disagreement regarding who instigated the conversation, Malko testifying that Ewing did and Ewing contending that Malko did. Ewing also testified that he did not recall making the last two remarks attributed to him above. The Trial Examiner was impressed by the accuracy and credibility of Malko's testimony and found as do we, that the conversation occurred substantially as detailed above.

<sup>5</sup> Their positions at the plant are discussed hereinafter. Epps and O'Hare left before the meeting was over, shortly after the meeting voted to affiliate with the A. F. of L.

he saw Somerville meeting with a group of men in the lunch room and so joined them. Present were Somerville, Ewing, J. S. Cheetham, the respondent's office manager, N. G. Major, the stockkeeper, R. P. O'Hare, the general foreman, Paulus and Cullen, foremen, and Valentine, Gorski, Oscar, Fisher, Mason, David, and Drift, ordinary employees. When Malko joined the meeting, Somerville said to him: "I heard that you were elected president of the A. F. of L." Somerville then asked Malko why the Union was formed, what was back of it, and what action it had taken at the meeting. Malko replied that he could not speak for the Union, since it was just organizing but that he would speak for himself. He said that the men were displeased about the working conditions; that other plants were getting unionized and were paying higher wages but that the respondent's employees were always treated badly; that the packing room "always had the worst" and "never did get a break." Somerville, in reply, stated that the respondent "always paid more than anybody else in the vicinity." Malko responded: "Yes, but that was before the unions got in. Right now they are below what anybody else pays." Some of the men present asked why they had not been approached with the petition and Malko replied that it was because they had said, "To hell with the unions" and were satisfied with plant conditions. When Fisher, one of the employees present, asked Malko about the heading on the petition and accused Malko of "double-crossing" the whole outfit by turning the whole bunch over to the A. F. of L., Somerville remarked, "I don't care what union comes into this plant as long as there are level-headed men in the union. That is all I care."<sup>6</sup>

On the following Sunday, November 26, the Union met again and voted to apply for a charter; 10 members signed the application, among them being Foremen Malko, Scottillo, and Paulus. The contract committee reported by reading the draft of the contract which it had prepared with the help of Malko, Shea from the Calco Chemical Workers Union, and sample contracts left by Burns. Several amendments were offered from the floor and accepted by the meeting.

## (2.) The activities of Moltrum

In November 1939 Nicholas Moltrum, an employee of the respondent at its plant in Kensington, Illinois, near Chicago, was president of the Paint, Varnish & Allied Products Industrial Union, herein called the Industrial, an unaffiliated union which at various times had contracts with the respondent covering its plants at Kensington,

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<sup>6</sup>The findings regarding this meeting are based largely on Malko's testimony, which the Trial Examiner believed and which was not controverted.

Cleveland, and Dayton, Ohio. During this period of time, James Errington was the assistant general superintendent of the Kensington plant and Stevens was the general superintendent.

According to Moltrum's uncontradicted testimony which we credit, as did the Trial Examiner, sometime during the third week in November Errington called Moltrum from his work in the plant to the office and told him that there was some trouble down at Bound Brook, that Somerville had things in bad shape, and that he (Errington) wanted Moltrum to "run down to Bound Brook and learn what it was all about." When Moltrum explained that he could not justify the expenditure of his union funds for such a purpose, Errington told him not to worry and thereafter gave him \$100. Moltrum undertook the mission thus assigned to him by Errington and on Tuesday November 28, he arrived at the Bound Brook plant.

Upon inquiry, Moltrum learned that Malko was president of the Union; went to see Malko at work, and described to him the program of the Industrial to organize all the plants of the respondent. During the discussion, Ewing approached the men, asked if Moltrum had a pass and, on receiving a negative answer, accompanied him to Somerville's office. The testimony regarding Moltrum's conversation with Somerville is conflicting. In response to Moltrum's question, Somerville stated that he had not been notified of Moltrum's mission. Moltrum thereupon asked about the "trouble" at Bound Brook. According to Moltrum's testimony, he then told Somerville about the Industrial, stated that he "wanted to be of benefit to all concerned," and questioned him regarding the situation at Bound Brook; further, according to Moltrum, Somerville replied that the A. F. of L. was organizing the employees and, upon Moltrum's request, gave him the names of the officers of the Union. Somerville, however, denied that he advised Moltrum that the A. F. of L. was organizing the employees or that he gave him a list of officers of the Union. Instead, he testified that Moltrum had a list containing "some names" when he came into the office and later, the same day, called him by telephone, inquired regarding the addresses of the employees listed thereon, and was furnished this information. Since Moltrum's testimony regarding the incident was credited by the Trial Examiner and Somerville's own testimony is in partial corroboration thereof, we find, as did the Trial Examiner, that Moltrum's testimony regarding this incident is substantially true. Following his conversation with Somerville, Moltrum went back into the plant, arranged with Malko to meet the latter and other officers of the Union on the following Saturday night, and then departed for Chicago.

The following day Moltrum reported back to Errington and Van Stone, a vice president of the respondent, told them about the Bound Brook situation, and asked Van Stone if he should go back to



Bound Brook. According to Moltrum's undenied testimony, Van Stone replied: "Yes, I think you should . . ." As they parted, Moltrum asked Van Stone for some money for the trip; Van Stone said that Errington would take care of it and then left. After some discussion, Errington gave Moltrum \$200. Moltrum, accompanied by George Mundo, an officer of the Industrial, proceeded to Bound Brook, where they met Malko, Paulus, Shea, Scotillo, and others on Saturday, December 2, pursuant to the appointment made earlier in the week with Malko.

Moltrum took all the men out to dinner, paid the check of approximately \$13, discussed unions, and then took them up to his hotel room where he told them more about his union and showed them a proposed contract from the Chicago plant and various membership cards used at the different plants he had organized. He told the group that he had "lined up" some of the respondent's plants and that he wanted to organize the rest of the groups. One of the men finally remarked that Moltrum had come to Bound Brook too late because they had already organized and applied to the A. F. of L. for a charter. Moltrum replied, "If I would have know [sic] that, I would have never come near this place. I would never come down here if I had known you had sent for your charter already." He then explained to the employees present that "he thought maybe he could get us into his group, because . . . after he had all of his groups lined up, he was going to turn around and try to get one big unit in the A. F. of L." After some further discussion the meeting ended.

The next afternoon Moltrum and Mundo went to Newark and then returned to Chicago. At the plant in Kensington, according to Moltrum's undisputed testimony, he reported to Errington on the results of his trip, that he "had the East pretty well set up," and he thought "we had the boys sold."

On Tuesday evening, November 28, the Production Club held its third meeting of the year in the company lunch room. This club had been organized 3 years before on invitations issued by a committee of foremen; its purpose was "to promote a friendly spirit among the employees, bring about a closer relation between the employees and the officers of the Company, afford all employees an opportunity to discuss their problems and to learn more about the activities and the history of the S-W Company family." All production employees were eligible for membership, upon invitation. However, it was largely composed of managerial, supervisory, and skilled employees.

At the November 28, 1939, meeting, Somerville spoke, according to the minutes, "exploding rumors of vast profits with facts and the annual financial statement of the Company"; he reviewed the costs

of production, overhead, and materials, and announced that the respondent's net profit was less than 5 percent of the volume of its business. He concluded by asking the men "not to believe rumors and to remain sane and sensible." According to Malko's undenied testimony, which we credit, as did the Trial Examiner, during the course of his remarks Somerville also referred to a union in existence at the Chipman Chemical Works, a neighboring concern, stating that such union "did not amount to anything, in view of the contract that they got." Somerville testified that upon the conclusion of his remarks he "opened the meeting for questions" and an inquiry was directed to him by one of the employees regarding "Who is Moltrum?" Somerville replied that he had "checked" on the recent visit of Moltrum to the plant and had ascertained that there was an independent union in existence at the respondent's Chicago plant and that Moltrum was an employee in said plant. Somerville then repeated his remark of the previous week to the effect that "he did not care what union got into the plant, as long as they had level-headed men at the head of it"

On Sunday, December 3, the Union held its third meeting. The charter was delivered and the local union was officially "obligated" by Burns. Permanent officers were elected, including Foreman Malko as president, Foreman Paulus as vice president, Foreman Scotillo as treasurer, and Foreman Epps as recording secretary. The contract committee read the latest draft of its proposed contract and further amendments were offered from the floor and adopted. The officers of the Union were then instructed to ask the respondent for a conference and to present the Union's proposed contract.

### (3) Formation of the Independent

In the meantime, in the early part of November 1939, several of the respondent's employees began discussing the formation of another independent union. Thereafter, on or about November 29, 1939, one Kolb, a skilled pipe fitter in the respondent's employ, began circulation of a "petition" for the Independent. He first went to Malko and asked if it was all right for him to take the petition around and get signatures "for an independent union." He testified that he asked Malko because he knew that Malko was the head of the Union and did not wish to create any dissension. Malko testified that he advised Kolb that he had no authority to give him permission and that, while he and Kolb were arguing about the matter, Cheetham, the respondent's office manager, walked by the door, and immediately thereafter "the petition stopped circulating." Kolb testified, however, that he circulated the "petition" in the mechanical department and boiler room of the respondent's plant after talking with Malko and obtained from 10 to 30 signatures thereto.

At about the same time 4 employees, Drift, David, Fisher, and Bertram, arranged for a meeting of employees, which was held on December 6, 1939. Kolb acted as temporary secretary of the meeting; Bertram presided. Bertram opened the meeting by advising the employees present that there would be no loss of jobs by not joining either the Independent or the Union. One O'Brien, from the Bakelite plant nearby, told of the independent union which had been organized there and was functioning successfully. Fisher advised the meeting that the respondent would give "the boys a better opportunity if we go about organizing in a civil way"; that the 175 employees there "would have better fellowship by talking over the problems and have the committee take them direct to the big boss, so they know of our troubles."<sup>7</sup> David told of a Massachusetts concern where 3,000 employees had struck for a 5-cent raise in pay; and the company had moved its plant to the South, leaving the 3,000 men out of employment. At the close of the meeting the secretary, Kolb, noted the names of 22 men who were interested in the organization.

The Independent continued to organize and on December 17 held its next meeting. Bertram, the temporary chairman, announced that 28 men had signed membership application cards. Leon Gerofsky, an attorney, addressing the meeting, compared the advantages of an unaffiliated union with affiliated unions and advised that it was unlawful for foremen or supervisors to take part in labor organizations. At the close of his remarks, Gerofsky was, by motion of the meeting, retained as counsel for the Independent. Proposed provisions for a contract were subsequently discussed and given him for embodiment in the draft that was to be presented later to the respondent. The Independent also elected its officers at this meeting. They were: David as president, Drift as vice president, Bertram as secretary-treasurer, and Gorel as sergeant-at-arms. Bertram and Fisher were also selected to join with Gerofsky in his representation of the Independent and his presentation of the contract to the respondent.

(4) Negotiations between the Union and the respondent; meetings between the respondent and the Independent

On December 12 or 13 Burns, Malko, Paulus, Epps, Scotillo, and Russ, as representatives of the Union, met with Somerville, Cheetham, and Ewing, who acted for the respondent. There is no serious conflict in the testimony regarding what occurred at this meeting. Malko introduced Burns to Somerville and also gave Somerville a copy of the proposed contract. Burns spoke of the "merits of the

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<sup>7</sup> These quotations are from the minutes of the Independent.

A. F. of L." and of the contract the committee was presenting. The question of the Union's representation of a majority arose and Somerville asked if he could see a list of the Union's members. Burns refused to supply such a list but offered to have the Union's membership records and the respondent's pay roll checked by a certified public accountant, or by a representative of the Board. Somerville announced that the matter of recognizing the Union, or doing business with it, was beyond his authority as local superintendent and that he would have to take the matter up with the main office at Cleveland. He suggested that the Union leave the proposed contract, if it so desired, and stated that he would confer with his superiors and later inform the Union as to the results. The contract was accordingly left with him.

During the conference Somerville asked if foremen had the right to belong to an A. F. of L. union. Burns asked his committee members if they were foremen. They all replied in the affirmative, saying that they were foremen, or working foremen.<sup>8</sup> Somerville stated that he could not understand why foremen were included in the Union and that that was another reason for not then bargaining with the committee. Burns replied that the men were not foremen but were, instead, working foremen. The meeting finally concluded with the understanding that they would meet again at a later time.

After the conference Somerville notified the respondent's main office in Cleveland of the meeting with the Union and of the presence of foremen acting on behalf of the Union; he also forwarded a copy of the proposed contract, and made some comments on it. The respondent's officials in Cleveland then consulted legal counsel, who advised the respondent "to inquire into this foremen participation in union activities." Thereupon, the respondent's assistant manager of manufacturing, John Prescott, was sent by the respondent to Bound Brook to make this inquiry. On December 14 Prescott interviewed individually Foreman Epps, Paulus, Scotillo, and Malko. He inquired of each man about the Union, the reasons for its formation, grievances and the reasons for and the extent of the union activity of each man interviewed.

According to Prescott's undisputed testimony, Epps stated that he had walked out of the first meeting of the Union without joining, but that subsequently his friends had given him the "cold shoulder," the men working under him would not talk to him, and that this situation finally became so distasteful that he sought the advice of his immediate superior, O. H. Johnson, who advised Epps to join the Union—even though he was a foreman—reminding him of Somer-

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<sup>8</sup> In fact, Russ was neither a foreman nor a working foreman.

ville's statement set forth above concerning "level-headed" leaders for any labor organization of the employees. Prescott testified further, without contradiction, that Scotillo, upon being interviewed, stated in effect that he thought that the respondent was better off with a union, with its logical method of handling grievances; that he had been very active in organizing the Union, had urged his own men to join, and discussed with other foremen how to induce their men to become members of the organization. Malko testified that, upon being interviewed by Prescott, he at first insisted that other members of the Union be present during the discussion, but relinquished this position when Prescott assured him that everything was "all right" and that he preferred to talk individually. Prescott testified that Malko, when questioned, enumerated a number of the employees' grievances, stated that he had been influenced in his decision to participate in union activities by the management's expressed desire for stable leadership of any labor organization of the employees, and that he did not question the "rightness or wrongness of persuading or influencing the men underneath" him to join the Union. Paulus, according to Prescott, likewise enumerated several grievances of the employees and also stated that he had not questioned the "rightness or wrongness of persuading or influencing the men underneath" him to join the Union. On December 16, Prescott similarly interviewed Foreman J. J. Kissida, O. R. Johnson, F. Pace, and Joseph Tyska. Of these, only Tyska had joined the Union and, according to Prescott, freely admitted that after joining he had urged the men working under him to become members of the Union when told that it would cost much more to join later. Prescott testified further that Johnson, although himself not a member, admitted having advised Epps to join the Union. We find that the above testimony of Prescott regarding his interviews with various of the respondent's foremen is substantially true.

On December 20, 1939, Burns telephoned Somerville and asked whether the respondent had considered the Union's demand for recognition. Somerville told him about Prescott's investigation at the Bound Brook plant on December 14 and 16, and advised that he was awaiting instructions from the main office in Cleveland. On that same day, Charlton Ogburn, the Union's counsel, in a letter to the respondent's president, Martin, asked that Somerville be advised to deal with the Union, suggesting that unless this were done, the Union would file charges with the Board.

On December 21, Gerofsky, Bertram, Fisher, and Drift, representing the Independent, called on Somerville. The Independent claimed to represent a majority of the employees and demanded exclusive recognition as the bargaining agent. Gerofsky had with him

a stack of the Independent's membership cards but he did not allow Somerville to inspect them. He presented the Independent's proposed contract and there was some discussion of its various provisions. Gerofsky also stated that foremen were coercing the employees and forcing them to join the A. F. of L. He demanded that the respondent notify the foremen publicly that they must discontinue all such activity, and requested that it post a notice stating that no foreman was permitted to take part in union activity, that any attempt by a foreman to influence an employee was without authorization, and that the employee was released from any obligation to follow that foreman's suggestions in that particular. Somerville replied that this was a highly involved legal matter and that he would seek advice from counsel before taking any action. After the meeting Somerville notified the respondent's main office at Cleveland of the events transpiring at the conference and forwarded a copy of the Independent's proposed contract.

#### (5.) Further negotiations

After a series of communications between Burns and Somerville on the one hand, and Ogburn and Veach, the respondent's attorney, on the other, a meeting was held in New York City on January 10, 1940, in Ogburn's office. Russ, Scotillo, Epps, and Burns, together with Ogburn, appeared as representatives for the Union. Ogburn and Veach conferred first without the Union committee's being present. According to Veach's undisputed testimony, which we credit as did the Trial Examiner, he advised Ogburn that he had been informed that a number of the respondent's foremen had organized the Union, and were officers thereof; that it was his understanding that there was another organization in existence among the employees and that he anticipated the natural thing would be for this other rival organization, or some organization, to file charges against the A. F. of L. union with the Board if precipitate action were taken; that he would be glad to arrange for the respondent to meet with the Union and instruct it to proceed with bargaining negotiations "on the substantive matters such as wages, . . . leaving for my further study this question of sole bargaining rights, and the question of whether there was an uncoerced majority in any particular union." Veach then explained, with reference to the matter of exclusive recognition, that "there was litigation on this subject, and if it were held that the A. F. of L. had coerced the men through the foremen's participation, even an agreement on the subject of sole bargaining agency would not stand." Although Ogburn did not at any time during his conference with Veach recede from the position that the Union was entitled to recognition as the exclusive bargaining representative of the employees, at the conclusion of Veach's statement regarding the position

of the respondent relative to granting such exclusive recognition to the Union, it was mutually agreed between Veach and Ogburn that Veach would arrange for a meeting between the respondent and the Union, and that Veach would so advise the committee of the Union who were waiting in an adjoining room. The committee was then called in and Veach advised it that he understood that the Union desired a conference with the respondent and that he had informed Ogburn that the respondent would arrange the meeting promptly. There is some conflict in the evidence as to what occurred between the union committee and Veach thereafter with respect to a proffer of proof by the Union of its majority representation. Because of our findings below it is unnecessary to resolve this conflict.

Upon the conclusion of his conference with Ogburn and the union committee, Veach notified Somerville of his conference in Ogburn's office where he had met not only Ogburn but also Burns and a committee from the Union, stated that he had not anticipated meeting Burns and the union committee, and suggested that, to demonstrate the respondent's neutrality, he should also see the attorney and a committee of the Independent. Somerville thereupon told Veach to communicate with Gerofsky.

Gerofsky, on receiving Veach's call, hastily summoned the Independent's committee from the plant and drove them into New York City, where they met Veach. Gerofsky asked for recognition of the Independent as the bargaining agent and spoke about raising salaries and protecting seniority rights. Veach replied that he could not answer at that time because there were two factions in the plant, the Union and the Independent, referred to his meeting with Ogburn, and advised that the question of recognition would have to be decided later.

On January 12, the Independent committee and Gerofsky met again with Somerville. Gerofsky renewed his demand that the respondent take action "to eliminate foremen from the A. F. of L." and threatened to file charges with the Board alleging the Union to be company-dominated. There was also "considerable talk of the coercion or pressure that the foremen were putting on their own men to get them into the A. F. of L." Somerville reminded Gerofsky of his conference with the respondent's attorney on January 10, stating that the matter was being considered from a legal standpoint, and that the respondent could take no action until it had received advice from its attorney.

On January 15, Burns again telephoned Somerville and asked for exclusive recognition of the Union. Somerville replied that the attorneys were considering the question and nothing could be done about it in the meantime.

On January 16, Somerville called a meeting at the plant of various company officials, supervisors, and foremen, including Malko, Paulus,

Scotillo, Epps, and others. Somerville advised the respondent's officials and foremen present at the meeting that "In the last few weeks a great deal of unrest . . . has arisen from union activities in the plant" which the respondent had "seen fit to overlook . . . because we do not want anyone to feel that we are trying to interfere with their rights," and that, as a result of this policy, conditions had arisen requiring correction. Somerville then referred to "conventions held in the wash rooms," which resulted in "a lot of time wasted," an "exchange of insults among men and possible threats and refusals to work with different men," and that these practices created ill feeling among the men, causing a loss in efficiency. He stated that he was talking to the men present "as part of the management of the plant" and that it was up to them to see that this condition did not get "out of hand" which it was tending to do. Somerville advised the men that he did not "expect to hear reports of any more of these conventions" and reminded them that "each was responsible for his group of men from the time they come in until they punch out" and that, as foremen, he wanted them to "put a stop to all exchange of insults" and if any of the men under them engaged in such practices "you should do something about it." Somerville stated further that the respondent had "no thought of seeing one organization get ahead of another" but that "organization work must be done off the company property." He concluded his remarks by stating that the situation had reached the point where "stern action" was necessary, again reminded the men present that they were "responsible for groups" whom they would be expected to keep "within due bounds," and that "I would like to see an end to all this foolishness because it can do nothing but harm for you as individuals and the company as a whole." During the course of his examination at the hearing in this case, Malko, president of the Union, was questioned regarding the remarks of Somerville at the meeting. Malko's interpretation of such remarks was that Somerville said "there was too much talk going around the plant of union activities; and the work, I believe myself, was suffering, and he believed that we should stop all talk about union activities because we're liable to get the company into trouble, especially the executive bunch."

At about the same time, Ewing, Kissida, O'Hare, Malko, Carlo, and other employees met for their usual Thursday night bowling game. Afterwards they went to a tavern to play some shuffleboard and have a few drinks of beer. During the course of the conversation at the bar, Ewing discussed the Union, asking Malko why he did not drop it. He commented: "There is no use having two unions. You have a union out there, and you do not have to pay dues to any outsider, and the A. F. of L. comes in and has to get some of the money out of it, and this Independent Union, you do not have to pay that kind of stuff out." Malko replied that he was only the president of the Union,



and it was up to the members to decide what they wanted to do. Ewing said: "After all, we should stick together, and it would be better for us if we don't have any outside unions," and asked "What is the matter with the Independent?" Malko did not reply, however, except to refer Ewing to Carlo who was standing nearby. Although Ewing denied making any reference to the Union or regarding the formation of an independent union on this occasion, the Trial Examiner credited the testimony of Malko regarding the incident, as we do. We find that the conversation occurred as set forth above.

On January 22, Somerville telephoned Burns but could not reach him. Thereupon, Somerville addressed a report to N. E. Van Stone, one of the respondent's vice presidents at Cleveland, in which he referred to the fact that he had just called Burns by telephone but could not reach him, and then stated:

When Mr. Burns comes in to discuss this matter with us the first point that he is going to raise will be recognition of the A. F. of L. Union as the exclusive bargaining agency. That recognition I do not see how we can grant as long as the present situation exists. We're faced with two unions, each of them claiming a majority, and I know positively in some cases that men have signed on the roll of both. Just how we are going to determine which unit, if either, is to be recognized as the exclusive bargaining agency, I think, should be left to Mr. Veach to handle.

The report then proceeded with a discussion of the various provisions of the Union's proposed contract, Somerville expressing his opinion as to the provisions which the respondent could agree to and those which it could not.

At the request of the Union, another conference was held on February 5. N. E. Van Stone, one of the respondent's vice presidents, and Somerville represented the respondent. Burns, Malko, Paulus, Scotillo, Epps, and Russ represented the Union. After some preliminary conversation, Malko read the proposed contract paragraph by paragraph, discussion being had on each paragraph as it was read. The union representatives again requested exclusive recognition and the respondent again referred to the same claim of the Independent. Van Stone announced that the respondent would bargain with the Union and would also bargain with the Independent, and with any employees who came to it individually; that the respondent's door was "always open for everyone who wanted to enter." After further discussion of the substantive provisions of the Union's proposed contract, the conference ended. According to Somerville, whose testimony is undenied, and which we credit as did the Trial Examiner, "we broke up on that paragraph, [dealing with exclusive recognition]

with the understanding that we would resume discussion whenever you [Veach] were able to get out again to complete your discussions with Mr. Ogburn."

On the following day, February 6, Somerville, acting upon Veach's advice, called a meeting of various plant officials, foremen, and supervisors, including Malko, Paulus, Scotillo, and Epps. Van Stone addressed the meeting. He told of the history of the respondent, of its growth and reputation throughout the world, and of the duty of management to serve as trustees for the owners. He discussed the problem of union activities at the plant and said: "One cannot be part of the management and at the same time engage in Union activities. It is up to Somerville and the people of this plant to see that the men who are picked for management make a choice between their position in management and their Union activities. If they are a part of any outside group, then they are part of that group and not part of the management." The men attending the meeting were soon thereafter notified by their immediate superiors that they would have to give up their positions as foremen or discontinue their union activities and their union memberships. They were given until the following Monday, February 12, to make their choices and report them to Somerville or to their immediate superiors.

On Sunday, February 11, the Union held its next meeting. The foremen reported that they had been told to resign from their foremanships at the plant or from the Union. Burns advised them to accept the respondent's demands upon protest. Thereupon Malko, Paulus, Scotillo, Epps, Buckley, Sowa, Cullen, Tyska, Rodrigo, and Emmonds resigned. New officers were elected to take the places of Malko, Paulus, Scotillo, and Epps. By the next day, February 12, the respondent was notified of the choices so made and each man concerned was retained in his usual position as foreman.

On February 20, Burns stopped at the plant and, with a new union committee consisting of employees Schuyler, Rothstein, and Gorski, called upon Somerville. Burns inquired about rumors that the respondent was willing to grant a wage increase and again asked for exclusive recognition. This Somerville again refused. The next day, the Union filed charges with the Board.

#### *B. Conclusions with respect to interference, restraint, and coercion*

From the foregoing it is clear that the action of Production Manager Ewing, on the occasion of his visit to the plant on November 17, at night, to talk to Malko, in questioning Malko regarding the Union, and suggesting that Malko see Somerville and that an unaffiliated union be formed instead of bringing in an outside group, did not constitute mere advice to a foreman to remain neutral but

a request that an "inside" union be formed; and therefore constituted an unlawful interference with the self-organizational efforts of the respondent's employees. Similarly, Ewing's remarks of like import to Malko and other employees after the bowling game on or about January 16 were intended to defeat the organization of the Union. Somerville's questioning of Malko at the meeting of employees on November 20 with respect to the reason for the formation of the Union and the action which it had taken at its meetings, together with his remarks at the November Production Club meeting, "exploding rumors of vast profits," advising the employees "not to believe rumors and to remain sane and sensible," and his reference on that occasion to the fact that the union at the Chipman Chemical Works "did not amount to anything," were obviously intended to discourage and restrain the employees in their efforts at self-organization. Moreover, Moltrum's two trips to Bound Brook, at the expense of the respondent, to urge the employees to form an unaffiliated labor union was similarly calculated to defeat A. F. of L. organization.<sup>9</sup> We find, as did the Trial Examiner, that by the foregoing acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Trial Examiner also found that the investigation conducted by Prescott into the union activity of various of the respondent's foremen and the respondent's order requiring the foremen to resign from the Union or give up their foremen positions constituted an unlawful invasion of their rights under the Act. For a proper appraisal of this finding it is necessary first to examine the evidence in the record relative to the duties and capacities of the foremen who were principally responsible for the formation of the Union and who resigned therefrom as a result of the respondent's order.

The undisputed evidence discloses that the 10 foremen who accepted the alternative of resigning from the Union are actual foremen as distinguished from working foremen or "gang pushers." Malko, president of the Union in the beginning, Scotillo, its treasurer, Rodrigo, Emmons, Sowa, and Tyska are all shift foremen working under General Foreman O'Hare in the finishing department of the respondent's plant. Each of them supervises and directs the work of from 12 to 15 men under him and, when working on the night shift, is the ranking supervisory official of the respondent in the plant. Their time is almost entirely devoted to supervision and it is only on rare occasions in an emergency that they engage in actual manual labor with other workmen, and then only in a relief capacity for a short

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<sup>9</sup> That Moltrum in fact entertained a sympathy for the A. F. of L., undisclosed to the respondent, does not, we believe, constitute a defense to the respondent's conduct. It should be noted, moreover, that Somerville, in his discussion at the Production Club meeting on November 28, 1939, identified Moltrum with the Industrial, an unaffiliated union.

time. These foremen have the authority to recommend hiring and discharging; they also have authority to discipline the men working under them. In this connection, their authority apparently does not differ from that of other of the respondent's more important supervisory officials, since Somerville's undisputed testimony, which we credit, is to the effect that he alone, of all the respondent's supervisory officials at Bound Brook, has the actual authority to hire and discharge, the authority of the other supervisory officials being limited to making recommendations in this regard. Also, the 10 foremen under consideration are consulted by the management relative to the men to be laid off when it becomes necessary to effect a force reduction and their recommendations in this respect are usually followed by the respondent. In the event of such a reduction in force, unlike ordinary employees, these foremen are not laid off but are retained in the respondent's employ although their hours of work, on such occasions, might be reduced. Their wages are also substantially higher than those of the employees working under them. Paulus, who was vice president of the Union, is the respondent's warehouse and shipping foreman and, unlike Malko and the others mentioned above, is not under the supervision of a general foreman but is directly accountable to Major, one of the respondent's superintendents. He is in complete charge of all the respondent's shipping activities and the 15 to 18 men engaged in this work. Of the remaining 3, Epps, secretary of the Union, and Buckley are subforemen working under Foreman Krausche in the copper-products department, and Cullen is foreman of the blending department under O'Hare. While each of these men has fewer employees working under him, his authority relative to such employees is substantially the same as that of the foremen whose duties have been outlined above.

From the foregoing, it is clear that the duties and capacities of the 10 foremen who were members and officers of the Union are unquestionably such as to bring them within the realm of management and thus to charge the respondent with responsibility for their activities with subordinate employees on behalf of a particular labor organization.<sup>10</sup> The evidence is undisputed that Prescott's investigation preceded by only a few days the complaint of the Independent that these foremen were coercing the employees working under them to join the Union.<sup>11</sup> Moreover, the evidence is undisputed that some of these supervisory employees in fact urged the employees under them

<sup>10</sup> *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72

<sup>11</sup> We have found that the respondent, in unlawfully advocating the organization of an unaffiliated union, lent some support to the Independent. It should be noted, however, that the Independent is not alleged to be company-dominated within the meaning of Section 8 (2) of the Act. Its right to complain to the respondent about the activities of supervisory employees cannot, we believe, be challenged.

to join the Union. Thus, the record is clear that some of the foremen in question, if not all, were engaged in activities which necessarily prevent the employees from making a free choice of their bargaining representative. Nor does the fact that these foremen were eligible to membership in the Union excuse their interference with the freedom of choice of subordinate employees or, by the same token, relieve the respondent from its responsibility for their activities in this connection.

The respondent's requirement that its foremen renounce their union affiliation, or suffer demotion was appropriate, we believe, to counteract their interference with the right of the subordinate employees to self-organization. Under the circumstances here present, we do not believe that such action constituted an unfair labor practice.<sup>12</sup>

We find that the respondent, by investigating the union activity of its foremen, and by requiring them as a result of such investigation, to relinquish their memberships in the Union or to give up their foremanships, has not interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### *C. The alleged refusal to bargain*

It has been found above that the first effort on the part of the Union to secure recognition as the exclusive bargaining representative of the employees and to bargain collectively with the respondent occurred on December 12, 1939. On that occasion Somerville questioned the Union's majority representation and requested proof thereof which was refused. He also raised the question regarding foremen participation in the Union and expressed a doubt concerning the propriety of the respondent's bargaining with the Union for this reason. A little over a week later, on December 21, the Independent met with

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<sup>12</sup> *Matter of Marshall Field & Company and Department Store Employees Union, Local 291 of United Retail, Wholesale and Department Store Employees of America, C. I. O.*, 34 N. L. R. B., No. 1; *Matter of General Motors Sales Corporation (General Motors Parts Division) and International Union, United Automobile Workers of America, Local 216, C. I. O.*, 34 N. L. R. B., No. 115. Our finding here as well as our findings above regarding anti-union statements made by high supervisory officials to these same foremen recognizes the dual capacity of minor supervisory employees under the Act. As employees within the meaning of Section 2 (2) of the Act they are entitled to exercise the rights guaranteed under the Act. As management representatives, however, employers are responsible for the impact of their supervisory authority upon the freedom of their subordinates to self-organization. See *N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667 (C. C. A. 8), en'g *Matter of Skinner and Kennedy Stationery Company and St. Louis Printing Pressmen's Union No. 6; Inc., et al.*, 13 N. L. R. B. 1186; *N. L. R. B. v. Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8), en'g *Matter of Christian Board of Publication and Allied Printing Trades Council of St. Louis, Missouri*, 13 N. L. R. B. 534. *Matter of West Oregon Lumber Company and Lumber and Sawmill Workers Local Union No. 3, International Woodworkers of American, et al.*, 20 N. L. R. B. 1; *Matter of Tennessee Copper Company and A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768; *Matter of Ford Motor Company and United Automobile Workers of America, Local No. 325*, 23 N. L. R. B., No. 28; *Matter of Crown Central Petroleum Corporation and Oil Workers International Union, Local No. 227*, 24 N. L. R. B. 217.

Somerville, presented a demand for recognition as the exclusive bargaining representative of the employees, likewise refused upon request to submit proof of its majority representation, and demanded that the respondent take steps to counteract the activity of the foremen members of the Union who, it claimed, were coercing employees working under them to join the Union. We have reviewed in detail above the subsequent conferences of the respondent with both the Union and the Independent at which the issues raised at these first conferences continued to remain obstacles to exclusive recognition.

Upon the record before us, the respondent was confronted with the demands of two competing labor organizations, both claiming to represent a majority and demanding recognition as the exclusive bargaining representative of the employees involved herein. We do not believe that it was incumbent upon the respondent, under the circumstances, to grant exclusive recognition to either of the two rival organizations.<sup>13</sup>

We find that the record does not support a conclusion that the respondent has refused to bargain collectively with the Union. We shall not, therefore, make any finding with respect to the appropriate bargaining unit or the extent of representation by the Union of the employees therein.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section 1 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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<sup>13</sup> The Trial Examiner, in finding that the respondent refused to bargain collectively with the Union, apparently failed to consider the equally legitimate claim to recognition of the Independent and its complaint against the activity of the respondent's foremen in support of the Union. We have found that the activities of the respondent's foremen interfered with the self-organization of its employees. An employer may not, of course, take advantage of his own unfair labor practices to relieve himself of his duty to bargain collectively with the exclusive representative of his employees. See *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318; *N. L. R. B. v. Chicago Apparatus Co.*, 116 F. (2d) 753 (C. C. A. 7), enfg *Matter of Chicago Apparatus Company and Federation of Architects, Engineers, Chemists and Technicians, Local 107*, 12 N. L. R. B. 1002. *Matter of Dixie Motor Coach Corporation and Sunshine Bus Lines, Inc. and Brotherhood of Railroad Trainmen*, 25 N. L. R. B. 869. Nor do we thus view the facts in the instant case. As we have noted above, the Independent is not found to be a company-dominated labor organization within the meaning of Section 8 (2) of the Act and thus incapable of representing the respondent's employees. Moreover, we have found that, through the activities of the foremen, the Union received some measure of assistance. Our finding that the respondent has not refused to bargain with the Union within the meaning of Section 8 (5) of the Act is based primarily upon the existing claims of two rival labor organizations and our opinion that under the particular circumstances presented in the record the respondent was not required to choose between them.

## V. THE REMEDY

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Accordingly, and in order to effectuate the policies of the Act, we shall order the respondent to cease and desist from such unfair labor practices and to post appropriate notices.

Upon the basis of the above findings of fact and upon the entire record in the case the Board makes the following:

## CONCLUSIONS OF LAW

1. Chemical Workers Union No. 22215, American Federation of Labor, and the Independent Labor Union of Employees of Sherwin-Williams Company, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not refused to bargain collectively, within the meaning of Section 8 (5) of the Act.

## ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Sherwin-Williams Company, Bound Brook, New Jersey, and its officers, agents, successors, and assigns shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act;

(a) Immediately post notices to its employees in conspicuous places throughout its plant at Bound Brook, New Jersey, and maintain such notices for a period of at least sixty (60) consecutive days

from the date of posting, stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it here by is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.